

RE: MB Docket no. 02-230, in the matter of digital broadcast copy protection

As a concerned citizen and consumer, I wish to state my strongest opposition to a broadcast flag mandate. My opposition is based on four primary areas of concern:

- 1) I believe that this mandate would exceed the limits placed on the government by the copyright clause of the Constitution.
  - 2) I believe that this mandate will block technological innovation, particularly by smaller companies and open-source innovators, at great cost (financial and otherwise) to the consumer
  - 3) This mandate will impose significant financial cost on the consumer by making obsolete any non-compliant devices he or she may already own.
  - 4) There is no solid evidence that fears of harms caused by digital copying have any basis in fact at all.
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- 1) The Constitution states that copyright law is intended “to promote the Progress of Science and the useful Arts.” With respect to “the useful Arts,” what is at issue here is not their creation but rather their distribution—the content owners are saying that they will not allow their works broadcast over DTV without copy-protection in place, but there is no argument that lack of such a flag is currently preventing the creation of such works, or their distribution via other media like DVD or even current analog broadcast television. On the other hand, as I will argue in point 2, the mandate will have a chilling effect on technological innovation, thereby detracting from the progress of science.
  - 2) Any modern computer has sufficient power to display DTV signals (with a DTV tuner card installed). One of the greatest modern technical innovations is the advent of open-source software. Its creation has enabled a truly unprecedented level of control and freedom for a computer user willing to deal with the learning curve that using open-source software entails—this freedom represents true progress in the area of computer science. However, in order to work, a broadcast flag system must necessarily be closed (because otherwise anyone could write code to disable the flag). Thus, open-source development will necessarily be prevented from working in the area of DTV, to the detriment of both technological progress and consumer choice. Furthermore note that a closed system requires some sort of controlling body to permit access to the technical details of the system to authorized developers. Typically, controlling bodies of this nature impose steep licensing fees for access to the technical information. In this case, these fees would create steep barriers to entry into the DTV market, thus limiting access for smaller companies, from which much technological innovation often comes; additionally, companies that have the resources to participate will necessarily pass these fees on to their customers, leading to higher prices for consumer electronics, with no benefit whatsoever to the consumer.
  - 3) A mandate for the broadcast flag will guarantee that any technology a consumer may already own (including DTV receivers purchased before the flag’s implementation!) will be unable to deal with DTV information. This means that a consumer is facing

purchase of not just a DTV receiver, but also a new, compliant VCR, PVR, and personal computer. This represents a substantial expense to any consumer. The government should not have a hand in making a consumer's current goods obsolete.

- 4) Finally, there is no empirical evidence whatsoever to suggest that the content owners have anything to fear from copying, be it analog or digital. Jack Valenti, head of the MPAA, famously likened the VCR's effect on the movie industry to that of the Boston Strangler on women. Valenti couldn't have been more wrong: the sale and rental of videotapes (and now DVDs) has provided the movie studios with an enormous source of revenue. Restricting the discussion to examples of digital copying, it's worthwhile to discuss the case of music. File-trading of music is apparently rampant; recordable CDs already outsell pre-recorded CDs. And the supposed harm from all this? The RIAA reports a decline in CD sales of less than 10 percent from the peak level of sales and blames this on digital copying. Of course, any rational analysis of the decline in CD sales would point to three facts much more likely to be the culprit: that the CD sale peak occurred during a boom economy; that the current economy is much, much weaker; and that reports from consumers suggest that CDs are widely viewed as overpriced. In short, digital copying is *not* destroying the music industry, and there is no reason to believe that copying of digital television, to the extent that it happened at all, would have any significant effect on the revenue streams of the content owners.

For all of these reasons, I strongly oppose the broadcast flag mandate.

Benjamin Lanin